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In The

Supreme Court of the United States

MORTEZA EGHBAL AND
MARILYN SYLVIA TRUJILLO,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Ninth Circuit misinterpreted this Court's decision in *Allison Engine Co. Inc. v. United States*, ___ U.S. ___, 128 S.Ct. 2123 (2008) by reducing liability under the False Claims Act ("FCA") to any case where a false statement causes or induces Government loss.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Morteza Eghbal and Marilyn Sylvia Trujillo, respectfully pray that a writ of certiorari issue to review the judgment and published opinion of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The decision of the Ninth Circuit Court of Appeals, affirming the district court's order for summary judgment finding petitioners civilly liable for approximately six million dollars under the False Claims Act, is reported at *United States v. Eghbal*, 548 F.3d 1281 (9th Cir. 2008); App. 1-11. The following decisions and orders are unreported, and are reprinted in the Appendix to the petition at the pages specified: the court of appeals' order denying rehearing and rehearing en banc (App. 36); the minute order of the district court granting the government's summary judgment motion and awarding $5,702,664.38 in damages and $148,000.00 in civil penalties against petitioners. App. 12-35.

JURISDICTION

The court of appeals entered its judgment on December 5, 2008, and denied petitioners' timely

request for rehearing and rehearing en banc on March 17, 2009. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Statutes:

The False Claims Act codified at 31 U.S.C. § 3729 provides:[1]

(a) Liability for certain acts. – Any person who –

> **(1)** knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
>
> **(2)** knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
>
> **(3)** conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

[1] Since the government sued petitioners under the False Claims Act in 2006, petitioners cite to the 2006 version of the statute. However, the False Claims Act was recently amended in 2009.

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that – [FN1]

(A) the person committing the violation of this subsection furnished officials of the

United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. – For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information –

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) **Claim defined.** – For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) **Exemption from disclosure.** – Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) **Exclusion.** – This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

STATEMENT OF THE CASE

On May 12, 2003, petitioners pleaded guilty to fraud charges relating to a real estate scheme involving the sale of foreclosed homes from the Department of Housing and Urban Development ("HUD"). App. 3, 16, 38-56. Pursuant to the written

plea agreement, petitioners admitted violating 18 U.S.C. §§ 1001(a)(2), 2(b) (making or aiding and abetting the making of a false statement), and 18 U.S.C. § 371 (conspiracy). App. 3, 16, 39-40.

The factual basis of the plea agreement establishes that between August 1994 and September 2001, petitioners purchased foreclosed homes from HUD and sold them to buyers who required loan assistance from HUD's Federal Housing Administration ("FHA"). App. 2, 15, 42. FHA provides mortgage insurance to commercial lending institutions to facilitate lending to low and moderate income families. App. 42. To obtain a loan insured by FHA, the buyer and seller must complete an "Addendum to the HUD-1 Settlement Statement" (hereinafter "HUD Addendum") which certifies, among other things, that the seller has not provided the buyer with any funds for the cash down payment. App. 13-14, 43.

Petitioners sold 200 HUD properties to buyers who used FHA secured loans. App. 2. To help the buyers obtain a FHA secured loan, petitioners submitted HUD Addendums wherein they falsely claimed they had not financially contributed to the buyer's cash down payment. App. 2-3, 15-16, 43-44.

The purpose of petitioners' fraudulent real estate scheme was to profit from the sale of each foreclosed home. App. 2, 42. The profit came from funds distributed by the mortgage lending institution. Petitioners had no interest nor intent of inducing mortgage default or FHA insurance payments since such payments would

only be paid to the commercial lending institutions and not to petitioners. App. 42. Of the 200 HUD properties sold by this fraudulent scheme, 62 resulted in defaulted mortgages and only 27 defaulted mortgages resulted in FHA insurance payments to commercial lending institutions. App. 3, 13.

As part of their plea agreements, petitioners made restitution in the amount of $1,346,220. App. 41, 50. The district court sentenced petitioner Eghbal to five months of imprisonment followed by three years of supervised release and fined him $7,500. Petitioner Trujillo was sentenced to three years of probation and fined $10,000.

Nearly three years later, in February, 2006, the government sued petitioners under the False Claims Act ("FCA") alleging violations of 31 U.S.C. §§ 3729(a)(1), 3729(a)(2) and 3729(a)(3). App. 4. The district court granted the government's motion for summary judgment finding that the factual basis of petitioner's plea agreement satisfied the elements of the FCA. App. 4. The government assessed actual damages at $2.8 million based on the FHA insurance payments and expenses distributed to those lending institutions claiming loss on the 27 defaulted properties. This amount was then tripled pursuant to provisions of the FCA resulting in an award of $8.4 million. This aggregate figure was then off-set by the amount of restitution paid by petitioners in the criminal action and the resale profits obtained by HUD. In sum, the district court entered judgment

for $5,702,664 in damages and $148,000 in civil penalties. App. 4-5.

Petitioners filed a timely appeal in the Ninth Circuit Court of Appeals arguing that the district court's decision constituted error because the plea agreement was insufficient to prove several elements necessary to convey FCA liability upon petitioners. Specifically, petitioners argued that the plea agreement left open the following genuine issues of material fact: (1) whether petitioners' false statements on the HUD Addendum constituted a false *claim* or demand for payment; (2) whether the false statements actually and/or proximately *caused* government loss; and (3) whether the government *relied* on the fraudulent HUD Addendum before issuing FHA insurance payments to institutional lenders. In large part, these arguments were premised on an understanding that the petitioners' real estate scheme was set up to defraud the institutional mortgage lenders, not the government, since petitioners' profits were exclusively derived from the initial loan on the HUD properties and no benefits, financial or otherwise, could be gained by petitioners if FHA subsequently paid an insurance claim on a defaulted mortgage.

After oral argument, this Court decided *Allison Engine Co. Inc. v. United States*, ___ U.S. ___, 128 S.Ct. 2123, (2008) which addressed "what a plaintiff asserting a claim under [the FCA] must show regarding the relationship between the making of a 'false record and statement' and the payment or

approval of a 'false or fraudulent claim . . . by the Government.'"[2] In this regard, this Court held,

> [T]he defendant must make the false record or statement "to get" a false or fraudulent claim "paid or approved by the Government." "To get" denotes purpose, and thus a person must have the purpose of getting a false or fraudulent claim "paid or approved by the Government" in order to be liable under § 3729(a)(2). Additionally, getting a false or fraudulent claim "paid . . . by the Government" is not the same as getting a false or fraudulent claim paid using "government funds." Under § 3729(a)(2), a defendant must intend that the Government itself pay the claim.

Id. at 2128.

In its opinion, the Ninth Circuit Court of Appeals ignored this holding by reducing the significance of *Allison Engine Co.* to one sentence: "The Court held that FCA liability attaches to a false statement that has a 'material effect' on the Government's eventual decision to pay a claim." *United States v. Eghbal,* 548 F.3d 1281, 1283 (9th Cir. 2008); App. 6. This interpretation of *Allison Engine Co.* misconstrued this Court's test for "intent" under the FCA as one of

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[2] After oral argument, petitioners filed a letter with the Ninth Circuit pursuant to Fed. R. App. P. 28(j) providing this Court's decision in *Allison Engine Co.* as supplemental authority in support of its arguments made on appeal.

"causation." Based on this misunderstanding of *Allison Engine Co.*, the Ninth Circuit affirmed the district court's summary judgment against petitioners for approximately six million dollars in FCA liability.

REASONS FOR GRANTING REVIEW

In *Allison Engine Co. Inc. v. United States*, ___ U.S. ___, 128 S.Ct. 2123, 2130, this Court made clear in an unanimous decision that the FCA should not be exploited by the government to punish actors who have defrauded private entities even where these entities receive government funds to support their operations. To ensure against this wrongdoing, the Court established an "element of intent" for all FCA prosecutions requiring proof that the defendant "must have the purpose of getting a false or fraudulent claim 'paid or approved by the Government'" as opposed to simply intending, and succeeding, to defraud a private entity. *Id.* at 2128. In analyzing petitioners' liability under the FCA, the Ninth Circuit completely ignored this test for establishing "intent" in *Allison Engine Co.* and, in a one sentence summary, erroneously reduced the holding in *Allison Engine Co.* to a test for material causation. By misconstruing *Allison Engine Co.* in this significant manner, petitioners were erroneously denied relief and civilly punished in the amount of six million dollars for defrauding a private entity, a commercial lending institution (bank).

In *Allison Engine Co.*, the Navy contracted with two shipyard companies to build a fleet of guided missile destroyers. *Allison Engine Co.* at 2126. The government contract specified that all parts must comply with baseline drawings and military standards and required that each generator set or "Gen-Set" be delivered with a certificate of conformance ("COC") certifying that these Navy standards had been met. *Id.* at 2127. The shipyard companies did not build the Gen-Sets for the destroyers. Instead, this project was delegated to several subcontractors. *Ibid.* After building non-compliant Gen-Sets, the subcontractors submitted invoices for payment to the shipyard companies with accompanying false COCs. *Ibid.*

The Sixth Circuit found the subcontractors liable under the FCA because "it determined that proof of an intent to cause a false claim to be paid by a private entity using Government funds was sufficient." *Allison Engine Co.* at 2128. Rejecting this interpretation of the statute, the Court held that FCA liability depends on a defendant's intent to defraud the government – not a private entity. *Ibid.* Specifically, the Court held,

> In the view of the [Sixth Circuit] Court of Appeals, it is sufficient for a § 3729(a)(2) plaintiff to show that a false statement *resulted* in the use of Government funds to pay a false or fraudulent claim. [citation] Under subsection (a)(2), however, the defendant must make the false record or

> statement "to get" a false or fraudulent claim "paid or approved by the Government." "To get" denotes purpose, and thus a person must have the purpose of getting a false or fraudulent claim "paid or approved by the Government" in order to be liable under § 3729(a)(2). Additionally, getting a false or fraudulent claim "paid . . . by the Government" is not the same as getting a false or fraudulent claim paid using "government funds." [citation] Under § 3729(a)(2), a defendant must intend that the Government *itself* pay the claim.

Allison Engine Co. at 2128 (emphasis added).

Petitioners' case is no different than *Allison Engine Co.* Like the defendants in *Allison Engine Co.*, petitioners never submitted a false statement intending that the government "itself" would pay the claim. Rather, petitioner submitted a false statement to the Department of Housing and Urban Development ("HUD") which was used to secure a loan from a private entity – a commercial lending institution (bank). This private entity, not the government, approved and paid the loan later disbursed to petitioners.

Petitioners' plea agreement unambiguously defines the scope and intent of their fraudulent real estate scheme: to sell foreclosed HUD homes for a profit. App. 2-3. To ensure the sale of a foreclosed HUD home, petitioners falsely represented that they had not provided any money to fund the buyers' cash

down payment when, in fact, they had. App. 3. This false statement was made to HUD in order to have the FHA insure the buyer's loan from the bank. The bank, and only the bank, funded the loan required for the purchase of the HUD home. As the sellers of the property, petitioners were paid by the bank's escrow account – not the government.

Of the 200 HUD homes sold according to this fraudulent scheme, the government paid FHA insurance claims on 27 defaulted mortgages. App. 3-4. These FHA payments, however, were made directly to the bank to reimburse the bank for its loss. In no instance was government money disbursed to petitioners either directly or indirectly. Unlike *Allison Engine Co.,* where the subcontractors were paid indirectly with "government funds," rather than by the "Government itself," here, petitioners were never paid by the "Government itself" nor were they paid with money derived from government funds.

In this respect, the fraud in petitioners' case was more attenuated from government interest than that in *Allison Engine Co.* where FCA liability was determined to be unfounded. The fraud in *Allison Engine Co.* required government payment to the prime contractor (the shipyard companies) which was then disbursed to the subcontractors. In contrast, the fraud in petitioners' case *did not require* any payment from the government. Rather, the payment of FHA insurance funds was incidental and irrelevant to petitioners' scheme as petitioners could only profit from the bank's loan not from subsequent insurance

payments made by the government. The mechanics of this scheme establish that petitioners only intended to defraud the bank, a private entity, and not the government. As such, the government wrongly used the FCA as a blanket remedy to over-penalize an otherwise conventional fraud case. This Court specifically warned against overreaching of this kind in *Allison Engine Co.* by explaining that "**[r]ecognizing a cause of action under the FCA for fraud directed at private entities would threaten to transform the FCA into an all-purpose antifraud statute.**" *Allison Engine Co.* at 2130 (emphasis added).

Like the Sixth Circuit in *Allison Engine Co.*, the Ninth Circuit here "eliminat[ed] th[e] element of intent . . . [] expand[ing] the FCA well beyond its intended role of combating 'fraud against the *Government.*'" *Allison Engine Co.* at 2128 (italics in original). Whereas the Sixth Circuit erroneously found FCA liability because "a false statement *resulted* in the use of Government funds to pay a false or fraudulent claim" (*Ibid.*, emphasis added), the Ninth Circuit similarly found that FCA liability was justified "because the false statements were '*relevant* to the government's decision to confer a benefit.'" *United States v. Eghbal*, 548 F.3d 1281, 1283 (9th Cir. 2008) (emphasis added); App. 5. Under this rationale, section "3729(a)(2) would then be 'almost boundless [as] . . . liability could attach for any false claim made to any college or university, so long as the institution has received some federal grants.'" *Allison Engine Co.*

at 2128. The Court's disapproval of conferring FCA on this broad basis in *Allison Engine Co.* precludes FCA liability against petitioners in this case.

In summarizing the decision in *Allison Engine Co.*, the Ninth Circuit completely ignored its fundamental holding: that the defendant must have the requisite *intent* of defrauding the government as opposed to defrauding a private entity that may receive and disburse government funds. The Ninth Circuit opinion reduces the holding in *Allison Engine Co.* to one sentence surmising, "The Court held that FCA liability attaches to a false statement that has a 'material effect' on the Government's eventual decision to pay a claim." *Eghbal* at 1283; App. 6. This selective interpretation of *Allison Engine Co.* allowed the Ninth Circuit to recast the critical issue in the case as one of only causation rather than causation and intent. By re-framing the issue in this manner, post-*Allison Engine Co.*, the Ninth Circuit erroneously affirmed the decision by the district court.

Read in its proper context, the Ninth Circuit's quotation from *Allison Engine Co.* states as follows,

> Under § 3729(a)(3), *it is not enough for plaintiff to show* that the alleged conspirators agreed upon a fraud scheme that had *the effect of causing a private entity to make payments using money obtained from the Government.* Instead, it must be shown that the conspirators intended "to defraud the Government." Where the conduct that the conspirators are alleged to have agreed

> upon involved the making of a false record or statement, it must be shown that *the conspirators had the purpose of "getting" the false record or statement to bring about the Government's payment of a false or fraudulent claim*. It is not necessary to show that the conspirators intended the false record or statement to be presented directly to the Government, but it must be established that they agreed that the false record or statement would have a material effect on the Government's decision to pay the false or fraudulent claim.

Allison Engine Co. at 2130 (emphasis added). When the phrase "material effect" is read in context, it is clear that mere causation or inducement is insufficient to prove FCA liability.

The Ninth Circuit's misinterpretation of *Allison Engine Co.* is best demonstrated by its misguided contention that *United States v. Miller* and *United States v. Veneziale* are "consonant" with this Court's holding in *Allison Engine Co. Eghbal* at 1284; App. 6. Both *Miller* and *Veneziale* base their finding of FCA liability on *causation* alone – a proposition expressly rejected in *Allison Engine Co. Allison Engine Co.* at 2130. In *Miller,* the Fifth Circuit Court of Appeals reversed summary dismissal of the FCA complaint because it found that fraudulent statements about the borrowers' ability to pay a FHA backed loan might have *caused* the resulting default that then induced the Government to make FHA insurance payments to the bank. *Id.* at 1284 (citing *United States v. Miller*,

645 F.2d 473, 476 (5th Cir. 1981)). Similarly, in *Veneziale*, the Third Circuit found the defendants liable under the FCA because their fraudulent HUD loan applications *induced* FHA insurance payments by the Government. *Ibid.* (citing *United States v. Veneziale*, 268 F.2d 504, 505 (3rd Cir. 1959)).

Since the analysis in *Miller* and *Veneziale* both turn on causation and inducement rather than *intent*, it is clear that the Ninth Circuit misunderstood and, thus, misapplied the holding in *Allison Engine Co.* By confusing "intent" and "causation" in this manner, the Ninth Circuit failed to apply the most essential legal test in petitioners' case. Therefore, contrary to the Ninth Circuit Court's opinion, "the district court's finding that use or fraudulent information to induce the Government to provide a loan guarantee" *did not* "constitute a false claim under the FCA." *Eghbal* at 1283; App. 6. This obfuscation denied petitioners relief which can only be remedied by this Court's review. For this reason, petitioners respectfully ask this Court to grant their petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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548 F.3d 1281

United States Court of Appeals,
Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Morteza EGHBAL; Marilyn Sylvia Trujillo,
Defendants-Appellants.
No. 07-55372.

Argued and Submitted June 4, 2008.
Filed Dec. 5, 2008.

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Steve Frank, Douglas N. Letter, and Brian R. Young, Attorneys, U.S. Department of Justice, Washington, D.C., for the appellee.

Appeal from the United States District Court for the Central District of California; John F. Walter, District Judge, Presiding. D.C. No. CV-06-01091-JFW.

Before: WILLIAM C. CANBY, JR. and JAY S. BYBEE, Circuit Judges; JUSTIN L. QUACKENBUSH, Senior District Judge.*

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* The Honorable Justin L. Quackenbush, Senior District Judge for the Eastern District of Washington, sitting by designation.

OPINION

QUACKENBUSH, Senior District Court Judge:

This is civil action brought under the False Claims Act (FCA), 31 U.S.C. § 3729, *et seq.*, against Morteza Eghbal and Marilyn Trujillo to recover treble damages and civil penalties for making false statements to procure home mortgage insurance from the Department of Housing and Urban Development (HUD). Defendants Eghbal and Trujillo appeal from the February 23, 2007 order of the District Court of the Central District of California granting the United States' motion for summary judgment.

The district court had jurisdiction pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3730(a) and this court has jurisdiction under 28 U.S.C. § 1291. Reviewing the district court's grant of summary judgment de novo, *United States v. Johnson Controls Inc.*, 457 F.3d 1009, 1012-13 (9th Cir.2006), we affirm.

I. BACKGROUND

Throughout the 1990s, Eghbal and Trujillo purchased HUD-foreclosed homes and resold them for profit to buyers with mortgage secured loans insured by HUD.[1] Eghbal and Trujillo sold to buyers who

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[1] The district court noted some confusion in the record over whether the loans were actually insured by "FHA," which meant either the "Federal Housing Association" or "Federal Housing Administration," and which was either a division of HUD or a

(Continued on following page)

lacked sufficient assets to cover the down payment on the properties, and provided the down payment for the buyers by depositing their own personal funds into escrow via cashiers' checks.

HUD would not insure a loan for a home for which the down payment was paid by the seller. To that end, HUD required a seller of a home to sign a document called an Addendum to the HUD-1 Settlement Statement (Addendum). By signing the Addendum, the seller certified that he had not, and would not, pay the buyer for any part of the down payment, nor did the seller have knowledge of any loans made to the buyer for purposes of financing the transaction other than those described in the sales contract. HUD would also not insure a loan without a validly signed Addendum. For each instance in which they provided the down payment via cashier's check, Eghbal and Trujillo fraudulently signed the Addendum, falsely stating that they provided no funds towards the down payment.

In total, Eghbal and Trujillo sold 200 properties, at least 62 of which defaulted on their HUD insured mortgages. The pair were criminally charged with making false statements concerning these 62 properties, to which they pled guilty via written plea agreements. A smaller subset of 27 properties were the subject of the FCA action. HUD paid out about

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precursor to the agency. The district court, and this opinion, refer simply to "HUD" as the insurer of the loans.

$2.8 million, representing the balances owing on the 27 defaulted mortgages.

II. PROCEDURAL HISTORY

The Government moved for summary judgment on its claims under the FCA, submitting as evidence of liability the admissions made in the plea agreements. The Government presented evidence that it paid out approximately $2.8 million in claims from mortgage holders and other expenses related to reselling the foreclosed properties and asked for treble damages. The Government also requested that civil penalties be imposed.

The district court granted the Government's motion, finding that there were no triable issues of fact as to whether Eghbal and Trujillo were liable for violations of the FCA because of the uncontroverted evidence that, absent the false statements on the Addendum, HUD would not have insured the mortgage loans. The district court relied on statements in Eghbal's and Trujillo's plea agreements that "HUD and FHA would not insure a loan if the down payment was paid by the seller, and the Addendum to the HUD-1 was not signed."

The district court further found there were no triable issues of fact regarding the amount of the Government's damages. The court awarded $5,702,664.38 in damages plus the minimum statutory penalty sought, $148,000. The court found that HUD had paid $2.6 million to the lenders of the 27

HUD-insured defaulted mortgages and with HUD's taxes, maintenance, and expenses totaling about $200,000, the total single damages amounted to $2.8 million. That amount was trebled by the court to a total $8.4 million. The court subtracted the $2.7 million received from resale of the properties, indemnification, and restitution made by Eghbal and Trujillo, resulting in a judgment of $5,702,664 plus the civil penalty of $148,000.

III. DISCUSSION

A.

Eghbal and Trujillo contest the district court's finding that they were liable under the FCA for making false claims. Eghbal and Trujillo contend that the Government failed to show that their false statements set into motion a false claim, because they sought only to fraudulently induce HUD to insure the mortgage, not to have the buyers default or cause the mortgage holders to make claims on HUD. It is true that Eghbal and Trujillo were not parties to the actual claims presented to HUD, made after the buyers defaulted, which resulted in monetary payments by the Government. However, liability under the FCA nevertheless attaches, because the false statements were "relevant to the government's decision to confer a benefit." *United States ex rel. Hendow v. Univ. of Phoenix,* 461 F.3d 1166, 1173 (9th Cir.2006). The plain language of the FCA contemplates liability not only for fraudulently causing the Government to

pay a claim, but also for causing the Government to *approve* a claim. 31 U.S.C. § 3729(a)(1).

The Supreme Court's recent decision in *Allison Engine Co., Inc. v. United States ex rel. Sanders,* ___ U.S. ___, 128 S.Ct. 2123, 170 L.Ed.2d 1030 (2008), confirms this reading of the FCA. The Court held that FCA liability attaches to a false statement that has a "material effect" on the Government's eventual decision to pay a claim. *Id.* at 2130-2131. The district court's finding that use of fraudulent information to induce the Government to provide a loan guarantee constitutes a false claim under the FCA is also consonant with holdings in our sister circuits. *See United States v. Miller,* 645 F.2d 473, 476 (5th Cir.1981) (holding allegations of defendant's false representation of amount of buyers' down payment in applications for FHA-insured loans is a false claim under the FCA); *United States v. Veneziale,* 268 F.2d 504, 505 (3d Cir.1959) (holding defendant liable under the FCA where he caused buyers to make a fraudulent application for an FHA-insured loan that defaulted).

Relying on *United States v. McNinch,* 356 U.S. 595, 599, 78 S.Ct. 950, 2 L.Ed.2d 1001 (1958), Eghbal and Trujillo argue that false statements supporting the loan applications are not, by themselves, a "claim" for which FCA liability attaches. *McNinch* is easily distinguished. There, the Supreme Court held that an application for credit insurance containing false information did not constitute a claim against the government, because the mere agreement to insure a loan never required the disbursement of funds. *Id.* However,

the Supreme Court specifically declined to answer in *McNinch* the question presented here, noting that

> Since there has been no default here, we need express no view as to whether a lending institution's demand for reimbursement on a defaulted loan originally procured by a fraudulent application would be a "claim" covered by the False Claims Act.

Id. at 599 n. 6, 78 S.Ct. 950; *see also United States v. Rivera,* 55 F.3d 703, 707 (1st Cir.1995); *Veneziale,* 268 F.2d at 505.

B.

The parties disagree about the requisite causation the Government must prove in order to establish FCA liability – a narrower proximate causation versus a "but for" standard – but the district court found that the undisputed evidence would satisfy either standard. This court agrees. Utilizing the narrower approach, in *United States v. Hibbs,* 568 F.2d 347 (3d Cir.1977), the court held that the "but for" causation element would not be applied, but rather a causal connection should be utilized where the Defendant misrepresented the condition of real property to obtain mortgage insurance. However, the *Hibbs* court, at 352, found the less stringent view of causation to be properly applied where "the false information furnished to the government bore upon the likelihood of the applicants meeting mortgage payments, and thus the misrepresentation had a causal connection with the

subsequent defaults." *Id.* at 352 (citing *United States v. Ekelman & Associates,* 532 F.2d 545 (6th Cir.1976)). The Third Circuit subsequently held in *United States ex rel. Cantekin v. Univ. of Pittsburgh,* 192 F.3d 402, 417 (3d Cir.1999) that false statements in applying for a Government grant are sufficient to establish causation. Other courts that have agreed with the more narrow causation approach have still found that false statements regarding the credit worthiness of purchasers to afford housing establish the required causal connection. *See e.g., United States v. Miller,* 645 F.2d at 475. The Seventh Circuit is in accord with this view, holding in *United States v. First Nat'l Bank of Cicero,* 957 F.2d 1362, 1374 (7th Cir.1992) that "[i]f the government would not have made a financial commitment absent the claimant's false statement, and the government is nevertheless required to pay a mortgage insurance claim or loan guaranty, the government has suffered damage 'because of' the false statement, as required by the Act."

We agree with the district court that the false statements at issue here bore directly upon the likelihood that the buyers would be unable to make their mortgage payments, and thus the misrepresentations had a causal connection to the subsequent defaults sufficient to support FCA liability. "[T]he very concern targeted by the prohibition against direct seller subsidies – that buyers who could not meet the 3% down payment requirement would have an inadequate incentive to avoid default – was exactly what eventuated." *United States v. Peterson,* 538 F.3d

1064, 1077 (9th Cir.2008) (holding that fraudulent statements to HUD regarding origin of down payment directly and proximately caused HUD's losses and were therefore compensable under the Mandatory Victims Restitution Act); *see also Veneziale,* 268 F.2d at 505 ("[T]he fraudulent statement in the loan application as to the purpose of the borrowing was an essential inducement to the Federal Housing Administration guaranty upon which the government has now had to pay. Thus the wrong of the defendant was an important, even an essential factor in subjecting the government to an enforceable demand for money."). Further, to the extent that any showing of reliance by the Government might be required, the district court correctly held that it had been proven by Eghbal's and Trujillo's admissions that HUD would not have insured the mortgages if it had known they had paid the down payments or that they had falsely signed the Addendum.

C.

The FCA provides for damages of "3 times the amount of damages which the Government sustains" and civil penalties of $5,000 to $10,000 per claim. 31 U.S.C. § 3729(a), 28 U.S.C. § 2461. The Supreme Court has observed that the FCA speaks of multiplying damages, not "'net damages'" or "'uncompensated damages.'" *United States v. Bornstein,* 423 U.S. 303, 314 n. 10, 96 S.Ct. 523, 46 L.Ed.2d 514 (1976). In computing the treble damages, the Court specifically directed that "the Government's actual

damages are to be [multiplied] before any subtractions are made for compensatory payments previously received by the Government from any source." *Id.* at 316, 96 S.Ct. 523.

Eghbal and Trujillo concede the amount of the judgment against them was correctly calculated pursuant to *Bornstein*. Their contention that this correctly-calculated award violated the Eighth Amendment's prohibition on excessive fines has no merit. The district court made specific findings according to the factors outlined in *United States v. 3814 NW Thurman Street,* 164 F.3d 1191, 1197-98 (9th Cir.1999), to analyze whether the amount of damages was grossly disproportional to the gravity of the offense. The district court noted that the 27 false claims were related to other illegal activities, additional and greater penalties could have been (but were not) imposed, and the harm caused by the scheme was farreaching. We agree that the amount of the forfeiture was not so grossly disproportionate to the gravity of the offense as to violate the Eighth Amendment, especially because a systematic and ongoing scheme like Eghbal's and Trujillo's undermines the integrity of the programs and erodes the public confidence in the Government's ability to manage and fund such programs.

CONCLUSION

The judgment of the district court is

AFFIRMED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES - GENERAL

Case No. **CV 06-1091-JFW (FMOx)**
Date: February 14, 2007

Title: United States America -v- Morteza Eghbal, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS):

ORDER GRANTING UNITED STATES' MOTION FOR SUMMARY JUDGMENT [filed 12/11/06; Docket No. 57]; AND VACATING PRE-TRIAL CONFERENCE AND TRIAL DATES

On December 11, 2006, Plaintiff United States of America ("Plaintiff" or the "Government") filed a Motion for Summary Judgment ("Motion"). On December 26, 2006, Defendants Morteza Eghbal and Marilyn

Trujillo (collectively "Defendants") filed their Opposition. On January 3, 2007, Plaintiff filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's January 8, 2007 hearing calendar and the parties were given advance telephonic notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. FACTUAL SUMMARY

Defendant Morteza Eghbal ("Eghbal") is a real estate investor who has sold over 200 properties to borrowers who received mortgage loans that were insured by the United States Department of Housing & Urban Development ("HUD"). United States Proposed Statement of Uncontroverted Facts and Conclusions of Law ("SUF") ¶ 5. During the time period relevant to this action, the Secretary of HUD was authorized pursuant to Sections 203(b) and 234(c) of the National Housing Act, 12 U.S.C. §§ 1709(b) and 1715y(c), to insure lenders against loss on mortgage loans made to buyers of single-family housing, including condominium units. Exhibits A-G in Support of United States' Motion ("Plaintiff's Exh.") E, Affidavit of Travis Pham ("Pham Decl.") ¶ 2. A loan is not eligible for HUD insurance unless the buyer contributes the minimum down payment from his or her own funds, or from another authorized source, such

as a gift from the buyer's relative or from the buyer's employer. *Id.* at ¶ 4. The seller or any person with an interest in the sale of the property is expressly prohibited from providing the down payment to the buyer. *Id.* To ensure that sellers do not provide the down payment to recipients of HUD-insured home mortgage loans, HUD requires sellers to sign an Addendum to the HUD-1 Settlement Statements ("HUD-1 Addendum") that includes the following certification: "I certify that I have not and will not pay or reimburse the borrower(s) for any part of the cash downpayment [sic]." *Id.*; *see also* Plaintiff's Exh. D, Affidavit of James Hagen ("Hagen Decl.") ¶ 11. HUD will not insure a loan if the down payment was paid by the seller, and the HUD-1 Addendum was not signed. SUF ¶¶ 1-2; *see also* Plaintiff's Exh. E, Pham Decl. ¶¶ 1, 6.[1]

If the borrower defaults on a HUD-insured loan and the lender forecloses, the lender may submit a claim to HUD for the balance due on the loan, including interest and other costs. Plaintiff's Exh. F,

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[1] Apparently several of the properties at issue here were insured by the "FHA." Defendants contend that the FHA is "the Federal Housing Association ("FHA")" which Defendants explain is "a division of HUD and provides mortgage insurance to approved commercial lending institutions." Opposition 4:1-3. Plaintiffs contend the FHA Is the "Federal Housing Administration . . . which was a precursor to HUD." Plaintiff's Exh. E, Pham Decl. ¶ 1. There is no dispute that the loans at issue here were insured by the Government, thus, the name of the insurer is not particularly important. For ease of reference, the Court refers to "HUD" as the insurer of the loans.

Affidavit of Mark F. Rinde-Thorsen ("Rinde-Thorsen Decl.") ¶ 2. Generally, after HUD pays the lender's claim, it takes title and possession of the real property. *Id.* After HUD acquires the property, HUD then generally pays the costs of real estate taxes, maintenance, and other costs related to holding and reselling the property. *Id.*

From 1996 through 1999, Eghbal and his wife, Defendant Marilyn Trujillo ("Trujillo"), sold 27 properties to recipients of HUD-insured home mortgage loans for which Eghbal and/or Trujillo paid or caused to be paid, the cash down payments. SUF ¶¶ 16-18; *see also* Plaintiff's Exh. E, Pham Decl. ¶ 3.[2] In connection with the sale of these 27 properties, Eghbal and/or Trujillo signed and submitted to the lender a HUD-1 Addendum for each property. SUF ¶¶ 46-72. Each lender included the HUD-1 Addendum for each property in the "Case Binder" that the lender sent to HUD.[3] Plaintiff's Exh. D, Hagen Decl. ¶¶ 24-25 and exhibits attached thereto at pgs. D11-D109.

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[2] There is no dispute as to the number or location of the properties at issue here, nor is there a dispute as to the manner in which Eghbal and/or Trujillo paid, or caused to be paid, the cash down payments. *See* SUF ¶¶ 16-45. Accordingly, the details of these transactions will not be recited here.

[3] HUD requires lenders to create and submit to a regional HUD Ownership Center a "Case Binder" for every loan that HUD insures under the National Housing Act. Plaintiff's Exh. D, Affidavit of James Hoogolan ¶ 10.

The representations Eghbal and Trujillo made on the HUD-1 Addendum were false, because they had in fact paid, or caused to be paid, the cash down payments for each of the 27 HUD-insured home mortgage loans. SUF ¶¶ 8-10, 12-14. In May, 2003, Eghbal and Trujillo pled guilty to, and were convicted of, violations of 18 U.S.C. § 371 (conspiracy to defraud the United States) and 18 U.S.C. § 1001(a)(2) (making false statement in a matter within the jurisdiction of the government) in connection with their submission of false and fraudulent HUD-1 Addendum; SUF ¶¶ 6, 11; Plaintiff's Exh. A, B.[4] In their plea agreements, Eghbal and Trujillo admitted that; in connection with the sale of 62 properties, they had defrauded HUD by paying the down payments for borrowers of HUD-insured loans, that they had paid the down payments by causing cashiers' checks to be deposited into escrow at closing, and that they falsely certified on the HUD-1 Addendum that they had not provided the down payments. SUF ¶¶ 7-10, 12-15.

After the borrowers of the 27 HUD-insured home mortgage loans at issue here defaulted, the lenders foreclosed and submitted claims for payment to HUD. SUF ¶¶ 75-102; Plaintiff's Exh. G, Affidavit of Sarah Pierce Martin ("Martin Decl.") ¶ 3 and exhibits attached thereto at pgs. G4-G-139. As a result of the 27 defaulted loans, HUD paid claims totaling

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[4] Trujillo also plead guilty and was convicted of violating 18 U.S.C. § 2(b) (aiding and abetting). SUF 11; Plaintiff's Exh. B.

$2,808,050.93 – consisting of $2,604,180.53 in insurance claims paid to the lenders, tax liabilities of $1,189.36, maintenance costs of $102,395.24 and $100,285.80 in costs incurred in connection with the re-sale of the 27 properties. SUF ¶ 102-105; *see also* Plaintiff's Exh F, Rinde-Thorsen Decl. ¶ 8 and exhibits attached thereto at pgs. F5-F34. HUD recovered $2,121,070 by re-selling the 27 properties. SUF ¶ 107; *see also* Plaintiff's Exh F, Rinde-Thorsen Decl. ¶ 8. Eghbal paid restitution in the amount of $499,387. SUF ¶ 108; Plaintiff's Exh. D, Hagen Decl. ¶ 39. Additionally, HUD received $101,031.41 in indemnification payments from the lenders. SUF ¶ 109; Plaintiff's Exh. G, Martin Decl. ¶ 4.

Plaintiff seeks $5,702,644.38 in damages plus a civil penalty of between $148,500 and $279,000. The FCA authorizes the Government to collect treble damages. 31 U.S.C. § 3729(a); *see also Graham County Soil & Water Conservation Dist v. United States ex rel. Wilson*, 545 U.S. 409, 411 (2005). Treble damages are calculated based on the loss the Government sustained prior to applying credit for the sums recovered through restitution and foreclosure. *See United States v. Bornstein*, 423 U.S. 303, 316 (1976). The Government's damage calculation is based on the trebling of the claims it paid ($2,808,050.93 x 3 = $8,424,152.79) less the following: $2,121,070, the amount recovered by the Government through re-sale of the 27 properties, Eghbal's restitution payments of $499,387, and indemnification payments of $101,031.41

received from the lenders, for a total damages of $5,702,664.38, before any award of civil penalties.[5]

II. LEGAL STANDARD

A. Motions for Summary Judgments

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). A party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see also Taylor v. List*, 880 F.2d 1040,

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[5] Plaintiff seeks a civil penalty of between $5,500 and $11,000 for each of the 27 claims paid by the Government. 31 U.S.C. § 3729(a); *see also Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. at 411. Thus, Plaintiff seeks total civil penalties of between $148,500 and $279,000. Defendants argue that if any civil penalty is awarded, the minimum civil penalty of $5,000 per claim or a total of $135,000 (27 x $5,000) is just. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, the minimum civil penalty was adjusted from $5,000 to $5,500 for violations occurring on or after September 29, 1999.

1045 (9th Cir. 1989) ("A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data."). In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "An issue of fact is not enough to defeat summary judgment; there must be a genuine issue of material fact, a dispute capable of affecting the outcome of the case." *American International Group, Inc. v. American International Bank*, 926 F.2d 829, 833 (9th Cir. 1991) (Kozinski, dissenting).

An issue is genuine if evidence is produced that would allow a rational trier of fact to reach a verdict in favor of the non-moving party. *Anderson*, 477 U.S. at 248. "This requires evidence, not speculation." *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1225 (9th Cir. 1999). The Court must assume the truth of direct evidence set forth by the opposing party. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir. 1992). However, where circumstantial evidence is presented, the Court may consider the plausibility and reasonableness of inferences arising therefrom. *See Anderson*, 477 U.S. at 249-50; *TW Elec. Serv., Inc v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is entitled to the benefit of all reasonable inferences, "inferences cannot be drawn from thin air;

they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party." *American International Group*, 926 F.2d at 836-37. In that regard, "a mere 'scintilla' of evidence will not be sufficient to defeat a properly supported motion for summary judgment: rather, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

B. Liability Under The False Claims Act

Under the False Claims Act ("FCA") civil liability may be imposed upon "any person who knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval," or any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government." 31 U.S.C. §§ 3729(a)(1) and (a)(2). A person who "conspires to defraud the Government by getting a false or fraudulent claim allowed or paid" is also liable under the FAC [sic] 31 U.S.C. § 3729(a)(3). Under the FCA a "'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee,

or other recipient for any portion of the money or property which is requested or demanded." 31 U.S.C. § 3729(c).

"[A]ny person who knowingly assisted in causing the government to pay claims which are grounded in fraud, without regard to whether that person has direct contractual relations with the government" may be liable for violation of the FCA. *U. S. ex rel. Marcus v. Hess*, 317 U.S. 537, 544-545 (1943). "The essential elements of FCA liability [are]: (1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due." *United States ex rel. Hendow v. University of Phoenix*, 461 F.3d 1166, 1174 (9th Cir. 2006). The Government need not prove actual damages to prevail under § 3729(a)(1) or § 3729(a)(2) of the FCA. *See United States ex rel. Hagood v. Sonoma County Water Agency*, 929 F.2d 1416, 1421 (9th Cir. 1991) (citing *Rex Trailer Co. v. United States*, 350 U.S. 148, 153, n. 5 (1956)).

III. DISCUSSION

A. There are No Genuine Issues of Material Fact Regarding Defendants' Liability for Violation of the FCA

Plaintiff contends that as a result of Defendants' convictions for violations of 18 U.S.C. § 371 and 18 U.S.C. § 1001(a)(2), and their admissions in their respective plea agreements, there are no disputed

issues of fact with respect to any of the elements required to establish FCA liability, and that Defendants are estopped from claiming otherwise pursuant to 31 U.S.C. § 3731(d).[6] Defendants admit that they knowingly made false statements, and that their false statements were material to HUD's decision to insure the 27 home mortgage loans. However, Defendants dispute that their false statements caused the Government "to pay out money."[7] Defendants argue that simply because their false statements caused Plaintiff

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[6] 31 U.S.C. § 3731(d) provides in pertinent party [sic], "a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements . . . upon a plea of guilty . . . , shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730."

[7] Defendants also argue that to establish FCA liability the Government must demonstrate that it "relied on [their] false statements in issuing the loans here." Opposition 11:24-25. Reliance is not an element necessary to establish FCA liability. *See e.g. United States ex rel. Hendow v. University of Phoenix*, 461 F.3d at 1174. Nevertheless, even if reliance were required, Defendants have admitted that the Government would not have insured the 27 home mortgage loans if it knew they had paid, or caused to be paid, the down payments or if the HUD-1 Addendum, containing their false statements, had not been signed. Additionally, the uncontroverted evidence establishes that HUD will not issue mortgage insurance without receiving the HUD-1 Addendum. Exhibit H in support of Plaintiff's Motion ("Exh. H"), Deposition of Travis Pham 67:12-13; 68:5-19. Thus, while the Government is not required to establish reliance, even if it were, the uncontroverted evidence demonstrates that the Government relied on the HUD-1 Addendum, which included Defendants' false statements, In deciding to insure the 27 loans.

to insure the 27 loans, does not also mean that "[D]efendants false statements caused the submission of false claims to be made on the [G]overnment." Opposition 14:23-24.[8]

The FCA's causation requirement is satisfied if the defendant caused a claim to be submitted to the government, even if he or she did not personally

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[8] Defendants unconvincingly argue that there are genuine issue [sic] of fact regarding materiality which preclude summary judgment. Defendants admit that their false statements were material to HUD's decision to insure the 27 loans at issue, but they argue that just because their false statements "were material to [HUD's] decision to insure the loans at issue does not necessarily establish that . . . [Defendants] caused, a false or fraudulent claim to be paid by" the Government. Opposition 10:11-13; *see also* Opposition 11:9-11 ("although the false statements must be material to the [G]overnment's activities or decision, it need not have the effect of inducing the [G]overnment to part with money or property.") Plaintiff understandably argues at length that Defendants cannot contest the materiality of their false statements because they have admitted that their false statements were material and because the uncontroverted evidence establishes that Defendants' false statements were material. Defendants' argument unsuccessfully attempts to create a continuum of materiality so that while they admit that their false statements were material to HUD's initial decision to insure the loans, they deny that their false statements were material when HUD had to pay the lender's claims. Although creative, Defendants' argument fails. Once the false statements are determined to be material to a decision by the Government which results in the Government having to pay money, the FCA materiality requirements has [sic] been established. Notwithstanding Defendants failed attempt to create a "continuum of materiality," the real issue they raise is whether causation has been established.

submit the claim. *United States v. Mackby*, 261 F.3d 821, 827 (9th Cir. 2001) ["*Mackby I*"]; *see also United States v. Bornstein*, 423 U.S. at 309 (false claim may be presented through an innocent third party); *United States v. Rivera*, 55 F.3d 703, 707 (1st Cir. 1995) (approving theory of FCA liability set forth in *United States v. Ekelman & Assoc.*, 532 F.2d 545, 552 (6th Cir. 1976) "where, . . . after fraud was perpetrated on a lending institution for which the perpetrator of the fraud had secured government insurance, the lender presented its own claim to the government for payment . . . [t]he lender's claim . . . completes the perpetrator's violation of the FCA."). The FCA requires "a causal rather than a temporal connection between fraud and payment." *United States ex rel. Main v. Oakland City University*, 426 F.3d 914, 916 (7th Cir. 2005).

"[A] demonstration that the government would not have guaranteed the loan 'but for' the false statement is sufficient to establish the causal relationship between the false claim and the government's damages necessary to permit recovery under the False Claims Act." *United States v. First National Bank of Cicero*, 957 F.2d 1362, 1374 (7th Cir. 1992); *see also United States ex rel. Hendow v. University of Phoenix*, 461 F.3d at 1170-1171 (noting the Congressional mandate that "the scope of false claims should be broadly construed" and that "each and every claim submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements or other corrupt or fraudulent conduct, or

in violation of any statute or applicable regulation, constitutes a false claim."); *United States v. McLeod*, 721 F.2d 282, 283-284 (9th Cir. 1983) (holding that the government had established its FCA claim where its financial loss was caused by defendant's fraud because "but for" the defendant's conversion of government funds, the government would not have been required to make a second payment to the proper recipient of the funds.); *United States v. Veneziale*, 268 F.2d 504, 505 (1959) (holding that a lender's claim for payment on a government loan guaranty is a false claim under the FCA, if the guaranty was induced by a false application).[9]

Moreover, where a defendant's false statements concern the buyer's financial qualifications for a

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[9] In *United States v. Veneziale*, 268 F.2d at 505, a closely analogous case, the Third Circuit reversed a lower court decision dismissing an FCA claim based on a fraudulent application to the FHA for a loan guaranty, and held that fraudulent statements in a loan application that were an essential inducement to the government's guaranty and upon which the government had to pay, created a sufficient causal connection between the false statement and the government's having to pay money for purposes of establishing FCA liability. *Id.* The Court reasoned that "the wrong of the defendant was an important, even an essential factor in subjecting the government to an enforceable demand for money." *Id.* The Court concluded that "[a]lthough the wrongdoer neither sought nor obtained any transfer of government funds or property to himself, it has long since been settled that a fraudulently induced contract may create liability under the False Claims Act when that contract later results in payment thereunder by the government, whether to the wrongdoer or someone else." *Id.*

HUD-insured home mortgage loan, the false statements are "more than a but-for cause" of any damages that the government sustains as a result of the borrower's default. *United States v. Spicer*, 57 F.3d 1152, 1159-1160 (D.C. Cir. 1995) (where it was undisputed that defendant intentionally misrepresented buyer's financial qualifications in order to induce HUD to approve mortgage loan and HUD suffered significant losses when buyer defaulted, defendant's misrepresentations were "more than a 'but-for' cause; they proximately caused HUD's losses"). In *Spicer*, the Court found that while it was "undoubtedly true that in each case other factors also 'caused' the buyer's default . . . as long as [defendant's] misrepresentations were a material and proximate cause, they need not have been the sole factor causing HUD's losses." *Id.* at 1159. *See also United States v. Miller*, 645 F.2d 473, 476 (5th Cir. 1981) (finding that although "[f]alse statements regarding residential property may not reasonably be a cause for subsequent defaults of mortgagors, as was the case in *Hibbs* . . . false statements regarding the ability of purchasers to afford housing could very well be the major factor for subsequent defaults" and concluding that the government had "clearly alleged the necessary causation factor" to avoid dismissal of complaint).[10]

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[10] Defendants sole reliance on *United States v. Hibbs*, 568 F.2d 347, 352 (3d Cir. 1977), to support their contention that their false statements did not cause the Government to pay

(Continued on following page)

Defendants have admitted that HUD would not have insured the 27 loans if it knew what they had paid, or caused to be paid, the down payments, and it would not have insured the 27 loans if the HUD-1 Addendum, containing Defendants' false statements, had not been signed. Additionally, the uncontroverted evidence establishes that HUD would not have issued mortgage insurance without the HUD-1 Addendum. Accordingly, there is no dispute that "but for" Defendants' false statements HUD would not have insured the 27 home mortgage loans at issue and after the buyers' defaulted it would not have been obligated to pay the lender's claims. Therefore, the evidence establishes that Defendants' false statements caused the Government "to pay out money."

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money is misplaced. The *Hibbs* Court held that a defendant's false representations concerning the condition of residential properties subject to federally-insured mortgage loans did not cause the government's damages following the borrower's defaults because defendant's false statements about the condition of the properties did not bear "upon the likelihood of the applicants meeting mortgage payments, and thus the misrepresentation [did not have] a causal connection with the subsequent defaults." *Id.* Where, as here, the false statements at issue bear directly upon the likelihood that the buyers would be unable to make their mortgage payments, even the *Hibbs* Court would agree that the Defendants' "misrepresentations would have a causal connection [to] the subsequent defaults" sufficient to support FCA liability.

B. There are No Genuine Issues of Material Fact Regarding Plaintiff's Damages

Plaintiff seeks $5,702,644.38 in damages as authorized by the FCA, and a civil penalty of between $148,500 and $297,000. Defendants argue that the damages requested by Plaintiff are "unduly harsh and unreasonably excessive" (Opposition 16:9-10), "bear no rational relation to the offense conduct and so greatly exceed[] the actual loss sustained here that is [sic] can only be viewed as punitive in purpose." Opposition 17:17-19. Additionally, Defendants argue that only the minimum civil penalty is appropriate.

A fine is unconstitutionally excessive under the Eighth Amendment if "(a) the payment to the government constitutes punishment for an offense, and (2) the payment is grossly disproportionate to the gravity of the defendant's offense." *Mackby I*, 261 F.3d at 829 (citing *United States v. Bajakajian*, 534 U.S. 321, 327-328 (1998)).[11] To determine whether a

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[11] Defendants half-heartedly argue that the Government's requested damages violate due process and equal protection because they amount to "a second punishment." *United States v. Halper*, 490 U.S. 435, 449 (1989). Under *Halper*, a court evaluating criminal and civil penalties imposed for the same violation was required to assess whether the civil penalty was "so disproportionate to the damages caused [as to] constitute[] a second punishment." *United States v. Halper*, 490 U.S. at 449-450. The Supreme Court rejected this approach in *Hudson v. United States*, 522 U.S. 93, 99 (1997) noting that "some of the

(Continued on following page)

payment is "grossly disproportionate," courts consider (1) whether the violation was related to other illegal activities; (2) the other penalties that the Legislature has authorized; (3) the extent of the harm caused; and (4) the gravity of the offense versus the amount of the forfeiture. *United States v. 3814 NW Thurman St., Portland, OR.*, 164 F.3d 1191, 1197-1198 (9th Cir. 1999) [*"Thurman St."*]; *see also United States v. Mackby*, 221 F.Supp.2d 1106, 1109 (N.D. Cal. 2002) [*Mackby II*] (same). Plaintiff has established that the damages award it seeks is not unconstitutionally excessive.

1. *Defendants Admitted to Engaging In Other, Related Illegal Activity*

In their plea agreements, Defendants admitted to participating in 62 fraudulent loan transactions involving HUD dating back to 1994 and continuing until at least September, 2901. SUF ¶¶ 10, 15; Plaintiff's Exh. A, B. These admissions establish that Defendants engaged in a broad, long-standing, sophisticated, successful scheme to defraud the Government.

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ills at which *Halper* was directed are addressed by other constitutional provisions," including the Excessive Fines Clause, which "protects against excessive civil fines, including forfeitures." *Hudson v. United States*, 522 U.S. at 102-103. Whether the damages requested by Plaintiff violate the Excessive Fine Clause is addressed *infra*.

Additionally, Eghbal has previously pleaded guilty to two felony charges involving fraud in San Bernardino Superior Court, including making false statements to a Notary Public. Plaintiff's Exh. C, Defendants' Response to Plaintiff's First Set of Requests for Admission at C10. Finally, in ruling on Plaintiff's Application for Prejudgment Attachment of assets and garnishment of funds, the Magistrate Judge assigned to this action found that Eghbal had fraudulently transferred certain assets to a limited liability corporation he had created after learning of this action with the "actual intent to hinder, delay or defraud" the Government.

2. *Other Penalties Are Authorized*

"Civil penalty awards in which the amount of the award is less than the statutory maximum do not run afoul of the Excessive Fines Clause." *Mackby II*, 221 F.Supp. 2d at 1110 (and cases cited therein); *see also Balice v. United States Dep't of Agriculture*, 203 F.3d 684, 699 (9th Cir. 2000) (holding that a $225,500 fine did not violate the Eighth Amendment where the maximum fine was $528,000, notwithstanding the lack of monetary loss suffered by the government.); *Ghaith R. Pharaon v. Board of Governors of the Fed. Reserve Sys.*, 135 F.3d 148, 156 (D.C. Cir. 1998) (holding that a $37 million penalty did not violate the Excessive Fines Clause since "the penalty [was] proportional to [the] violation and well below the statutory maximum [of $111.5 million]"); *United States v. Emerson*, 1078 F.3d 77, 79 (1st Cir. 1997)

(holding that "a fine one-half the size of that permitted by the relevant statue, assessing $5,000 for each of [defendant's] thirty-seven admitted violations rather than the statutory maximum of $10,000 per violation . . . though substantial, is constitutionally permissible.")

The Government seeks no more than is authorized by the FCA; treble damages less the amounts to be "credited" to Defendants, and a civil penalty within the range prescribed by statute.

3. *Defendants Fraudulent Scheme Caused Significant Harm*

The "extent of the harm caused" for purposes of Excessive Fines Clause analysis is measured by "the amount the government paid in response to the false claims." *Mackby II*, 221 F.Supp.2d at 1112. Moreover, the harm caused by false claims "extends beyond the money paid out of the treasury" to the intangible effects that fraud has on the "administration and integrity" of the defrauded federal program. *United States v. Mackby*, 339 F.3d 1013, 1018-1019 (9th Cir. 2003) ["*Mackby III*"]. *See also Mackby II*, 221 F.Supp.2d at 1114 ("It is also important to note that Mackby's actions have undermined the public's confidence in the government's ability to manage its programs."); *United States ex rel. Rosales v. San Francisco Housing Authority*, 173 F.Supp.2d 987, 1019 (N.D. Cal. 2001) (noting that the government's harm in an FCA case is not "easily measurable in

dollars" because "fraud erodes public confidence in the government's ability to efficiently and effectively manage its programs").

Notably, Congress provided for treble damages and an automatic civil penalty for each false claim precisely because of the seriousness of FCA offenses and the costs incurred by the Government as a result of false claims. *Mackby III*, 339 F.3d at 1017-1018 (noting, in raising the statutory penalty to $10,000 per claim, "that defrauding the government is serious enough to warrant an automatic forfeiture."); *see also United States v. Halper*, 490 U.S. at 445 (noting that the government's injury includes "not merely the amount of the fraud itself, but also ancillary costs, such as the costs of detection and investigation, that routinely attend the government's efforts to root out deceptive practices directed at the public purse."); *United States ex rel. Rosales v. San Francisco Housing Authority*, 173 F.Supp.2d at 1019 (citation omitted) ("As *Genty* and *Bornstein* realized, the government must foot the bill for the costs, delays, and inconveniences occasioned by fraudulent claims").

Defendants' fraudulent scheme lasted approximately seven years and involved many co-conspirators.[12] During that time Defendants paid or cause to be paid the down payments for approximately 62 loans and

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[12] Defendants note in their Opposition that they were arrested with thirteen other people in connection with their fraudulent scheme. Opposition 18 n. 6.

their conduct "resulted in approximately $5,542,000 In fraudulent loans [being] funded using [HUD] insured home mortgage loans." Plaintiff's Exh. A at A8, B at B7. It is undisputed that as a result of Defendants' fraudulent scheme HUD made payments totaling $2,808,050.93 on the 27 loans at issue in this action.[13] The Government has also incurred administrative costs, investigative expenses, and litigation expenses, including the expense of obtaining prejudgment relief when Eghbal attempted to hide his assets.

4. *The Gravity of the Offense Relative to the Amount of the Judgment*

As noted above, Defendants' fraudulent scheme lasted approximately seven years, involved many co-conspirators, a large number of loans, and resulted in the Government insuring "approximately $5,542,000 in fraudulent loans." Defendants do not argue that

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[13] Defendants' argument that their wrongdoing was essentially harmless because the Government ultimately recovered a portion of the money it paid as a result of the 27 defaulted loans has been considered, and rejected. *See Mackby III*, 339 F.3d at 1019 ("Congress specifically rejected a 'no harm, no foul' argument."). Additionally, in their Statement of Facts, Defendants inferentially "mention" that the Government's damages request is excessive because it failed to mitigate its damages by maximizing the prices at which it resold the 27 homes it acquired after the buyers' defaulted. Because Defendants have offered neither legal authority to establish that the Government had a duty to mitigate nor produced any evidence to establish that if such a duty exists, it was breached, the Court finds that the Government did not fail to mitigate its damages.

their offenses were insignificant, rather they suggest that given the significant criminal penalties imposed, the damages requested by the Government are excessive. Yet, Defendants offer no authority to suggest that the Court should consider the criminal penalties imposed in assessing whether the civil penalties sought are unconstitutionally excessive.

Based on the foregoing, the Court's [sic] finds the judgment sought by the Government is not constitutionally excessive, the Government's requested damages of $5,702,664.38 and civil penalties of $148,500[14] are not grossly excessive and Defendants have failed to overcome the "strong presumption" in favor of the constitutionality of damage awards authorized by the FCA. *See United States v. 817 N.E. 29th Drive, Wilton Manors, Fla.*, 175 F.3d 1304, 1309 (11th Cir. 1999) (explaining that "[b]ecause Congress is a representative body, its pronouncements regarding the appropriate range of fines for a crime represent the collective opinion of the American people as to what is and is not excessive. Given that excessiveness is a highly

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[14] Because Plaintiff does not request a specific civil penalty, but rather offers a range of between $148,500 to $297,000, the Court exercising its discretion determines that the minimum civil penalty is fair and appropriate in light of the Defendants' guilty pleas, incarceration, restitution payment and the significant damages awarded pursuant to the FCA compared to the actual loss suffered by the Government. *See United States ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp*, 299 F.Supp.2d 483, (D.Virgin Islands 2004) (Court's [sic] consider "fairness" when awarding the minimum civil penalties).

subjective judgment, the courts should be hesitant to substitute their opinion for that of the people. . . . Consequently, if the value of forfeited property is within the range of fines prescribed by Congress, a strong presumption arises that the forfeiture is constitutional.")

IV. CONCLUSION

Based on the foregoing, Plaintiff's Motion for Summary Judgment is **GRANTED**. Plaintiff shall have Judgment in its favor against Defendants, jointly and severally, in the amount of $5,702,664.38 in damages, plus civil penalties of $148,500 and costs of suit. Plaintiff shall file a Proposed Judgment consistent with this Minute Order by February 16, 2007.

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MORTEZA EGHBAL; MARILYN SYLVIA TRUJILLO, Defendants-Appellants.	No. 07-55372 D.C. No. CV-06-01091-JFW Central District of California, Los Angeles ORDER (Filed Mar. 17, 2009)

Before: CANBY and BYBEE, Circuit Judges, and QUACKENBUSH,* Senior District Judge.

The panel judges have voted to deny appellant's petition for rehearing. Judge Bybee voted to deny the petition for rehearing en banc, and Judges Canby and Quackenbush recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Appellants' petition for rehearing and

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* The Honorable Justin L. Quckenbush [sic], Senior District Judge for the Eastern District of Washington, sitting by designation.

petition for rehearing en banc, filed February 20, 2009, is DENIED.

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MORTEZA EGHBAL, aka Morry Defendant.	No. CR 03-465 PLEA AGREEMENT FOR DEFENDANT MORTEZA EGHBAL, aka Morry (Filed May 16, 2003)

1. This constitutes the plea agreement between MORTEZA EGHBAL ("defendant") and the United States Attorney's Office for the Central District of California ("the USAO") in the above-captioned case.

This agreement is limited to the USAO and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities.

PLEA

2. Defendant gives up the right to indictment by a grand jury and agrees to plead guilty to a four-count information in the form attached to this agreement or a substantially similar form.

NATURE OF THE OFFENSE

3. In order for defendant to be guilty of count one, which charges a violation of Title 18, United States Code, Section 371, the following must be true: (1) beginning in or about August 1994, and continuing to at least September 2001, there was an agreement between two or more persons to commit at least one crime as charged in the information; (2) defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and (3) one of the members of the conspiracy performed at least on [sic] overt act for the purpose of carrying out the conspiracy, with agreement on a particular overt act. In order for defendant to be guilty of counts two through four, which charge violations of Title 18 U.S.C. § 1001(a)(2), the following must be true: (1) defendant made a false statement in a matter within the jurisdiction of a government agency or department; (2) defendant acted willfully, that is deliberately and with

knowledge that the statement was untrue; and (3) the statement was material to the government agency or department's activities or decisions. Defendant may be guilty as an aider and abettor, pursuant to Title 18, U.S.C. § 2(b) if (1) a false statement was made by someone; (2) defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit the making of the false statement; and (3) defendant acted before the crime was completed. Defendant admits that defendant is, in fact, guilty of these offenses as described in counts one through four of the information.

PENALTIES AND RESTITUTION

4. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 371 is: five years imprisonment; a three-year period of supervised release; a fine of $250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of $100. The statutory maximum sentence that the Court can impose for each violation of Title 18, United States Code, Sections 1001(a)(2) and 2(b) is: five years imprisonment; a three-year period of supervised release; a fine of $250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory, special assessment of $100. Therefore, the total maximum sentence for all offenses to which defendant is pleading guilty is: twenty years imprisonment; a 3-year period of

supervised release; a fine of $1,000,000 or twice the gross gain or gross loss resulting from the offenses, whichever is greatest; and a mandatory special assessment of $400.

5. Defendant understands that defendant will be required to pay full restitution to the victims of the offenses. Defendant agrees that, in return for the USAO's compliance with its obligations under this agreement, the amount of restitution is not restricted to the amounts alleged in the counts to which defendant is pleading guilty and may include losses arising from charges not prosecuted pursuant to this agreement as well as all relevant conduct in connection with those charges. The parties currently believe that the applicable amount of restitution is approximately $1,500,000, but recognize and agree that this amount could change based on facts that come to the attention of the parties prior to sentencing. Defendant further agrees to make restitution at or before the time of sentencing. Defendant further agrees that defendant will not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

6. Defendant understands that if defendant is presently on probation, parole or supervised release in another case, the convictions in this case may result in revocation of such probation, parole, or supervised release.

7. Supervised release is a period of time following imprisonment during which defendant will

be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

8. Defendant also understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the right to serve on a jury.

FACTUAL BASIS

9. Defendant and the USAO agree and stipulate to the following statement of facts:

Beginning in or about August 1994, and continuing to at least September 2001, in Los Angeles County, San Bernardino County and Riverside County, defendant and others purchased foreclosed homes from The Department of Housing and Urban Development ("HUD"), and from other places, and sold those homes to individuals pursuant to a loan insured by the Federal Housing Administration ("FHA"). The FHA is a division of HUD which provides mortgage insurance to approved commercial lending institutions so that home buyers could obtain financing to purchase homes and obtain mortgages at more favorable terms than those otherwise

commercially available. Defendant and others recruited people to purchase defendant's homes using an FHA loan who did not meet the FHA requirements, specifically, who did not have sufficient assets or money to cover the necessary down payment on the property. HUD required that the seller and purchaser of a property being insured by an FHA loan sign a document called an Addendum to the HUD-1 Settlement Statement. By signing the Addendum to the HUD-1, the seller of a property certifies that he/she has no knowledge of any loans that have been or will be made to the purchaser, or loans that have been or will be assumed by the purchaser, for purposes of financing the transaction other than those described in the sales contract. The seller further certifies that he/she has not or will not pay or reimburse the borrower for any part of the cash down payment. The Addendum to the HUD-1 further states that it is a crime to knowingly make a false statement on the form, pursuant to Title 18, United States Code, Sections 1001 and 1010. HUD and FHA would not insure a loan if the down payment was paid by the seller, and the Addendum to the HUD-1 was not signed.

In this instance, defendant or others would sell a property pursuant to an FHA loan to a borrower, and tell the borrower that defendant would provide the funds for the downpayment. Co-conspirators would tell defendant how much money was needed for the down payment, and defendant or others would obtain a cashier's check from either defendant's Bank of

America account or his Pomona First Federal account for the down payment. Defendant would give, or cause that check to be given, to the escrow agent for the down payment for deposit into escrow. The escrow agent would then cause some of the checks to be altered so that defendant's name was not on the copy of the cashier's check submitted to the mortgage company and to HUD.

Specifically: (1) On or about May 21, 1999, defendant purchased a cashier's check, using funds in his bank account number [Financial Account Number Omitted] at Pomona First Federal Bank & Trust, in the amount of $2,186, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], San Bernardino, California. On or about May 21, 1999, defendant signed a fraudulent Addendum to the HUD-1 Settlement Statement for the sale of [Home Address Omitted], San Bernardino, California falsely stating that he did not provide any funds towards the down payment. (2) On or about December 22, 1998, defendant purchased a cashier's check using his funds in bank account number [Financial Account Number Omitted] at Bank of America, in the amount of $7,100, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], Ontario, California. On or about December 15, 1998, defendant signed a fraudulent Addendum to the HUD-1 Settlement Statement for the sale of [Home Address Omitted], Ontario, California falsely stating that he did not provide any

funds towards the down payment. (4) On or about May 12, 1999, defendant purchased a cashier's check using funds from defendant's bank account number [Financial Account Number Omitted] at Bank of America, in the amount of $5,950, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], Rialto, California. On or about May 13, 1999, defendant signed a fraudulent Addendum to the HUD-1 Settlement Statement for the sale of [Home Address Omitted], Rialto, California falsely stating that he did not provide any funds towards the down payment. (3) On or about August 10, 1998, defendant purchased a cashier's check using funds from defendant's bank account number [Financial Account Number Omitted] at Pomona First Federal, in the amount of $4,550, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], Rialto, California. On or about August 13, 1998, defendant signed a fraudulent Addendum to the HUD-1 Settlement Statement for the sale of [Home Address Omitted], Rialto, California falsely stating that he did not provide any funds towards the down payment. (6) On or about April 23, 1999, defendant purchased a cashier's check using funds from defendant's bank account number [Financial Account Number Omitted] at Bank of America, in the amount of $4,796.38, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], Fontana, California. On or about April 22, 1999, defendant signed a fraudulent Addendum to the

HUD-1 Settlement Statement for the sale of [Home Address Omitted], Fontana, California, falsely stating that he did not provide any funds towards the down payment. (7) On or about May 27, 1999, a cashier's check using funds from defendant's bank account number [Financial Account Number Omitted] at Bank of America, in the amount of $3,950, and caused that check to be deposited into escrow as the down payment on the sale of [Home Address Omitted], San Bernardino, California. On or about July 7, 1999, defendant signed a fraudulent Addendum to the HUD-1 Settlement Statement for the sale of [Home Address Omitted], San Bernardino, California, falsely stating that he did not provide any funds towards the down payment.

In total, defendant paid, or caused to be paid, the down payments for approximately 62 loans, which has resulted in approximately $5,542,000 in fraudulent loans to be funded using FHA-insured home mortgage loans, and has caused a loss of approximately $2,056,482, excluding interest, to HUD.

WAIVER OF CONSTITUTIONAL RIGHTS

10. By pleading guilty, defendant gives up the following rights:

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of counsel at trial and at every other stage of the proceeding, including, if defendant could not afford an attorney, the right to have the Court appoint one for defendant.

d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against defendant.

f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

SENTENCING FACTORS

11. Defendant understands that the Court is required to consider and apply the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing

Guidelines") but may depart from those guidelines under some circumstances.

12. Defendant and the USAO agree and stipulate to the following applicable Sentencing Guideline factors, based on the guideline amendments, effective November 1, 2000:

Base Offense Level	:	6	[U.S.S.G. § 2F1.1(a)]
Specific Offense Characteristics			
(Loss Amount)	:	+12	[U.S.S.G. § 2F1.1(b)(1)(M)]
(More than Minimal Planning)	:	+2	[U.S.S.G. § 2F1.1(b)(2)]
Adjustments (Aggravating Role)	:	+4	[U.S.S.G. § 3B1.1(a)]
Acceptance of Responsibility	:	-3	[U.S.S.G. §3E1.1(b)(1) & (2)]
Total Offense Level	:	21	

The USAO will agree to a downward adjustment for acceptance of responsibility only if the conditions set forth in paragraph 15 are met. Defendant and the USAO agree not to seek, argue, or suggest that any other specific offense characteristics or adjustments be imposed or are applicable. If, however, after signing this agreement but prior to sentencing, defendant were to commit an act, or the USAO were to discover a previously undiscovered act committed by defendant prior to signing this agreement, which act, in the judgment of the USAO, constituted

obstruction of justice within the meaning of USSG § 3C1.1, the USAO would be free to seek the enhancement set forth in that section. Defendant understands that defendant's base offense level could be increased if defendant is a career offender under USSG §§ 4B1.1 and 4B1.2. In the event that defendant's offense level is so altered, the parties are not bound by the base offense (or adjusted offense) level stipulated to above. In addition, defendant and USAO agree that defendant may argue that a downward departure based only on family circumstances be imposed. Defendant and the USAO further agree that the USAO may seek an upward departure.

13. There is no agreement as to defendant's criminal history or criminal history category.

14. The stipulations in this agreement do not bind either the United States Probation Office or the Court. The Court will determine the facts and calculations relevant to sentencing. Both defendant and the USAO are free to: (a) supplement the facts stipulated to in this agreement by supplying relevant information to the United States Probation Office and the Court, (b) correct any and all factual misstatements-relating to the calculation of the sentence, and (c) argue on appeal and collateral review that the Court's sentencing calculations are not error, although each party agrees to maintain its view that the calculations in paragraph 12 are consistent with the faces of this case.

DEFENDANT'S OBLIGATIONS

15. Defendant agrees:

a) To plead guilty as set forth in this agreement.

b) To not knowingly and willfully fail to abide by all sentencing stipulations contained in this agreement.

c) To not knowingly and willfully fail to: (i) appear as ordered for all court appearances, (ii) surrender as ordered for service of sentence, (iii) obey all conditions of any bond, and (iv) obey any other ongoing court order in this matter.

d) Not to commit any crime; however, offenses which would be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are not within the scope of this agreement.

e) To not knowingly and willfully fail to be truthful at all times with Pretrial Services, the U.S. Probation Office, and the Court.

f) To pay the applicable special assessments and restitution at or before the time of sentencing.

THE USAO'S OBLIGATIONS

16. If defendant complies fully with all defendant's obligations under this agreement, the USAO agrees:

a) To abide by all sentencing stipulations contained in this agreement.

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and an additional one-level reduction if available under that section.

c) Except for criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), not to further prosecute defendant for violations of Title 18, United States Code, Sections 371, 1343, 1001(a)(2) and 1010, arising out of (i) defendant's conduct described in the stipulated factual basis set forth in paragraph 9 above; and (ii) defendant's participation from June 2000 through August 2001 in purchasing and reselling single family homes with and through Home Ownership Provided Everyone (HOPE). Defendant understands that the USAO is free to prosecute defendant for any other unlawful past conduce or any unlawful conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, where the sentence should fall within that range, and the propriety and extent of any departure from that range.

d) To recommend that defendant be sentenced at the low end of the applicable Sentencing Guidelines range provided that the offense level is calculated by the Court to be 21 or higher and provided that the Court does not depart downward in offense level or criminal history category. Notwithstanding its agreement to recommend the low end of the Sentencing Guidelines range, the USAO is free to recommend any conditions of confinement, including imprisonment, if the total offense level falls within Zone B or C of the sentencing table.

BREACH OF AGREEMENT

17. If defendant, at any time between the execution of this agreement and defendant's sentencing on a non-custodial sentence or surrender for service on a custodial sentence, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, defendant will not be able to withdraw defendant's guilty pleas, and the USAO will be relieved of all of its obligations under this agreement.

18. Following a knowing and willful breach of this agreement by defendant, should the USAO elect to pursue any charge or any civil or administrative action that was either dismissed or not filed as a result of this agreement, then:

a) Defendant agrees that the applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the USAO's discovery of any knowing and willful breach by defendant.

b) Defendant gives up all defenses based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of defendant's signing of this agreement.

LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

19. Defendant gives up the right to appeal any sentence imposed by the Court, including any order of restitution, and the manner in which the sentence is determined, provided that (a) the sentence is within the statutory maximum specified above and is constitutional, (b) the Court does not depart upward in offense level or criminal history category, and (c) the Court determines that the total offense level is 21 or below and imposes a sentence within the range corresponding to the determined total offense level. Defendant also gives up any right to bring a post-conviction collateral attack on the convictions or sentence, including any order of restitution, except a post-conviction collateral attack based on a claim of ineffective assistance of counsel, a claim of newly discovered evidence, or an explicitly retroactive

change in the applicable Sentencing Guidelines, sentencing statutes, or statutes of conviction.

20. The USAO gives up its right to appeal the Court's Sentencing Guidelines calculations, provided that (a) the Court does not depart downward in offense level or criminal history category and (b) the Court determines that the total offense level is 21 or above.

RESULT OF VACATUR, REVERSAL OR SET-ASIDE

21. Defendant agrees that if any count of conviction is vacated, reversed, or set aside, the USAO may: (a) ask the Court to resentence defendant on any remaining counts of conviction, with both the USAO and defendant being released from any stipulations regarding sentencing contained in this agreement, (b) ask the Court to void the entire plea agreement and vacate defendant's guilty pleas on any remaining counts of conviction, with both the USAO and defendant being released from all of their obligations under this agreement, or (c) leave defendant's remaining convictions, sentence, and plea agreement intact. Defendant agrees that the choice among these three options rests in the exclusive discretion of the USAO.

COURT NOT A PARTY

22. The Court is not a party to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' stipulations. Even if

the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from any stipulation, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty pleas, and defendant will remain bound to fulfill all defendant's obligations under this agreement. No one – not the prosecutor, defendant's attorney, or the Court – can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the statutory maximum.

NO ADDITIONAL AGREEMENTS

23. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

This agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DEBRA W. YANG
United States Attorney

/s/ Stefanie Isser Goldblatt — 5/8/03
STEFANIE ISSER GOLDBLATT — Date
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

/s/ Morteza Eghbal — May 12, 2003
MORTEZA EGHBAL — Date
Defendant

I am MORTEZA EGHBAL's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

/s/ Vicki Podberesey — May 12, 2003
MICHAEL D. NASATIR/ — Date
VICKI PODBERESEY
Counsel for Defendant
MORTEZA EGHBAL